

CWP-3645-1992(O&M)

-1-

Sr.No.306

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-3645-1992(O&M)

Date of Decision: 22.03.2018

Gurdev Singh and others

.....Petitioners

versus

Joint Director, Panchayats, Punjab and another

.....Respondents

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present Mr.Harsh Bunker, Advocate for the petitioners no.1 and 3.
Mr. Amit Jain, Advocate for petitioner no.2.
Mr. Sandeep Vermani, Addl. A. G. Punjab.
Mr. R.S.Chauhan, Advocate for respondents.

MAHESH GROVER, J(ORAL)

The petitioners impugn the order dated 11.09.1991 (Annexure P15), passed by respondent no.1, exercising the power of Commissioner, under the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter called 'the Act').

The solitary argument raised before us is that the lands have been described as *Jumla Mushtarkha Malkan*, a fact not disputed by the Gram Panchayat.

A Full Bench decision of this Court rendered in **Parkash Singh and others v. Joint Development Commissioner, Punjab and others**, Civil Writ Petition No. 2318 of 2002, decided on 08.11.2013, observed as under:-

“Para 57.

The 1961 Act was enacted, so as to consolidate, amend the law regulating rights in “Shamilat Deh” and “Abadi Deh”. The 1961

Act is confined to rights in “Shamilat Deh” and “Abadi Deh”. Section 2(g) of the 1961 Act defines “Shamilat Deh” by including land described in Section 2(g)(1 to 5) and excluding land described in Section 2(g)(i) to (ix) in “Shamilat Deh”. Section 2(g) of the 1961 Act (reproduced in the earlier part of the judgment) does not declare that land reserved for common purposes, during consolidation by a Consolidation Officer, after applying a pro-rata cut , i.e., “Jumla Mushtarka Malkan” shall also be included in “Shamilat Deh”.

Para 58

Section 3 of the 1961 Act sets out the land to which the 1961 Act applies but does not include “Jumla Mushtarka Malkan”. Section 4 pertains to the vesting of rights in Panchayat and nonproprietary land, which is included in “Shamilat Deh” of any village, and also does not refer to “Jumla Mushtarka Malkan”. Section 5 of the Act provides for regulation of use and occupation etc. of land vested or deemed to have vested in panchayats, under the 1961 Act. Section 7 of the Act confers the power to put a panchayat in possession of “Shamilat Deh”, but does not refer to “Jumla Mushtarka Malkan” land. Section 7-A, confers the power of appeal upon the Commissioner. Section 8 provides for saving of existing cultivating possession in “Shamilat Deh”. Section 9 provides for utilisation of income.

Para 59

Section 11 bears the title “Decision of claims of right, title or interest in “Shamilat Deh” and empowers the Collector to adjudicate any claim, right, title or interest in “Shamilat Deh”. Section 11 does not refer to much less confer power upon the Collector to decide disputes with respect to any right, title, or interest in land reserved during consolidation by applying a pro-rata cut i.e. “Jumla Mushtarka Malkan”.

Para 60

Thus, an appraisal of provision of the 1961 Act makes it absolutely clear that “Jumla Mushtarka Malkan” land is not included in “Shamilat Deh” and, therefore, provisions of the 1961 Act including provisions of Section 11 that empower the Collector to decide a dispute regarding title shall not apply if the land is “Jumla Mushtarka Malkan”

In view of the above, the Commissioner's findings necessarily

CWP-3645-1992(O&M)

-3-

have to be set aside particularly when it hinges on a notification issued by the State at some point of time vesting these lands in the Gram Panchayat which, however, subsequently was set aside. In any eventuality, there is a Civil Court decree in favour of the petitioners.

Having regard to the facts and totality and on account of the observations made by the Full Bench of this Court which would bind us, we set aside the impugned order of the Commissioner leaving the Gram Panchayat with liberty to avail the remedies in law.

Petition stands allowed.

(MAHESH GROVER)
JUDGE

22.03.2018
mamta

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No